

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1692 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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GOPAL RAMCHANDRA SHAHU

THROUGH RAMCHANDRA K SHAHU

Versus

STATE OF GUJARAT

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Appearance:

MR NIGAM R SHUKLA for Petitioner

MS GAJJAR AGP for Respondent Nos. 1, 2 & 3.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 2nd September, 1998, made by the Commissioner of Police, Rajkot City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act,

1985 (hereinafter referred to as 'the Act').

The grounds of detention suggest that two offences for violation of prohibition law have been registered against the petitioner, and at the relevant time, were pending investigation. In both the cases, the petitioner and one another, were found to be in possession of liquor in large quantity. Apart from the aforesaid two offences registered against the petitioner, further information in respect of anti-social activities of the petitioner, has been collected by the police by recording statements of two witnesses. Both the witnesses have stated that they had a shop in the city and on refusing to succumb to the petitioner's demand, the petitioner was enraged and had beaten the witnesses in public and had also used knife to intimidate the witnesses and the people who had gathered. The people were frightened and had run away and the shops were immediately closed. On the basis of the aforesaid material, the Detaining Authority has recorded the subjective satisfaction that the petitioner is a 'bootlegger' within the meaning of section 2 (b) of the Act, and that his activities are 'prejudicial to the maintenance of public order' within the meaning of sub-section (4) of section 3 of the Act.

It is true that both the offences have been registered against the petitioner for violation of prohibition law, however, nothing on record suggests that at the time of the raid, anything happened that would amount to breach of public order. Though the two witnesses have, on the assurance of anonymity, stated that the petitioner has been indulging into anti-social activities which are detrimental to the maintenance of public order. What is disturbing is that the credibility of the witnesses and the correctness of the said statements have not been verified. Both the statements have been recorded on 1st September, 1998, and the impugned order of detention has been made on 2nd September, 1998. This, in my view, does not leave sufficient time for the police to test the credibility of the witnesses and the genuineness of the contents of their statements. I have noted that the Detaining Authority has personally recorded the verification, but such formal verification is meaningless. It is the bounden duty of the police to ascertain the credibility of the witnesses. The correctness of the statements made by them. A formal verification by the Detaining Authority or any other officer would not be sufficient. Besides, the Detaining Authority has not made any counter affidavit to show whether such exercise had been

undertaken or not. At least, in the present case, it is not possible to believe that the statements were duly verified, nor there is contemporaneous evidence to support the statements made by the witnesses. The Detaining Authority ought not to have relied upon the said statements, without proper verification, to record his subjective satisfaction in respect of the nefarious activities carried on by the petitioner. In absence of the said statements, there would not be any material to indicate that the petitioner's activities were prejudicial to the maintenance of public order.

Petition is, therefore, allowed. The impugned order dated 2nd September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI